UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/52/495
16 October 1997
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Fifty-second session
Agenda item 111

RIGHT OF PEOPLES TO SELF-DETERMINATION

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 51/83 of 12 December 1996, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Annex

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

I. INTRODUCTION

1. During its fifty-first session the General Assembly adopted resolution 51/83 on 12 December 1996 which, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government or threaten the territorial integrity and political unity of sovereign States or to promote secession or fight the national liberation movements struggling against colonial or other forms of alien domination or occupation. The Assembly called upon all States that had not yet done so to consider taking necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and urged them to cooperate with the Special Rapporteur in the fulfilment of his mandate.

2. The General Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training are causes of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations; requested the Centre for Human Rights of the Secretariat, as a matter of priority, to publicize the adverse effects of mercenary activities on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries; and requested the Special Rapporteur to report, with specific recommendations, his findings on the use of mercenaries to undermine the right of peoples to self-determination to the General Assembly at its fifty-second session.

3. Accordingly, and pursuant to the above-mentioned resolution, the Special Rapporteur has the honour to submit this report on activities during the period January-August 1997 to the General Assembly for consideration.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

4. The Special Rapporteur submitted his report (E/CN.4/1997/24) to the Commission on Human Rights on 13 March 1997. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner/Centre for Human Rights.

5. The Special Rapporteur returned to Geneva on two occasions, from 20 to 23 May 1997 and from 11 to 15 August 1997, to hold various meetings, to participate in the fourth meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, held from 21 to 23 May 1997, and to draft this report.

B. Correspondence

6. Pursuant to General Assembly resolution 51/83, the Special Rapporteur sent a communication on 4 June 1997 to all States Members of the Organization requesting the following:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to their Government on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another country from which actions were carried out that affected or potentially affected the sovereignty of their country, the exercise of the right of their people to self-determination, and the enjoyment of human rights by their population;

(d) Information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband;

(e) Information on domestic legislation currently in force and on international treaties to which their country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on their Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in their Government's view, may be of use in enhancing the international treatment of the topic of the prohibition of the use of mercenaries;

(g) Information and views on the existence of security service, consultancy and military training companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals, for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the country's investments and economic ventures.

7. In response to an earlier request by the Special Rapporteur, the Director-General for Special Affairs of the Ministry of Foreign Affairs of Colombia, Mr. Juan Manuel Osorio Acevedo, sent the following letter, dated 19 December 1996, to the Special Rapporteur. The text of the letter reads as follows:

> "I have the honour to address you on behalf of the Government of Colombia in response to your note G/SO 214 (18-13), in which you request information on possible activities by mercenaries and their use as a means of violating human rights.
>
> "The Ministry of Defence of Colombia, through Dr. María Victoria Uribe de De Guzmán, Human Rights Adviser, has informed the Ministry of Foreign Affairs, in note 001626/MDASE-DH-725, that it has no knowledge of any such activities in Colombia."

8. In a letter dated 6 January 1997 addressed to the Assistant Secretary-General for Human Rights, the Minister for Foreign Affairs of Cuba, Mr. Roberto Robaina González, stated the following:

> "I have the honour to acknowledge receipt of your note G/SO 214 (18-13), together with the appended letter from the Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, with reference to General Assembly resolution 50/138, which requests the Special Rapporteur to report on the use of mercenaries.
>
> "The information below also meets the requirements of General Assembly resolution 51/83 dealing with the same matter. In addition, the Government of Cuba reserves the right to provide any further information it may deem timely and relevant.
>
> "The use, recruitment, financing and training of mercenaries are crimes that are of deep concern to the Government of Cuba, inasmuch as they violate fundamental principles of international law, including non-intervention in the internal affairs of States and the territorial integrity, legal equality and independence of States, and impede the process of the self-determination of peoples struggling against colonialism and all forms of foreign domination and occupation. The activities of mercenaries constitute, in and of themselves, a flagrant violation of basic, inalienable human rights.
>
> "The Government of the Republic of Cuba supports the outlawing of the use, recruitment, financing and training of mercenaries and the suppression of their activities, considering as it does that they constitute a flagrant violation of the sovereign right of States and the exercise of the right of peoples to self-determination as well as an affront to the human rights and fundamental freedoms of all humanity. Accordingly, Cuba has been a sponsor, both in the General Assembly and in the Commission on Human Rights, of all the resolutions adopted to date in this matter, and has consistently supported the admirable work that has been accomplished by

Mr. Enrique Bernales Ballesteros ever since his assumption of the duties of that Commission's Special Rapporteur.

"It is a fact, as the Special Rapporteur states in his report to the Commission on Human Rights at its fifty-second session, that even in peacetime mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, and endangering the lives, safety and human rights of its inhabitants.

"Our country has been the victim of mercenary attacks from the earliest days following the victory of the revolution. Most of these actions have been organized in the United States of America and have involved primarily the use of Cuban nationals residing in that country, although on some occasions the presence of United States nationals, hiring themselves out as soldiers of fortune, has been reported. For this reason, the Cuban Government considers that nationals of a country should be deemed mercenaries when they attack their own country at the behest of a foreign Power and are in its pay. The Special Rapporteur should examine this situation in greater depth, as his findings might well enrich his terms of reference and shed fresh light on them.

"The mercenary and terrorist groups operating against Cuba from the territory of the United States do so openly and with full publicity. They are organized along military lines, their members are trained in the use of arms and explosives, and they boast shamelessly of their plans for aggression and criminal actions against Cuba. Examples of such terrorist groups are those known as 'Comandos L', 'Alpha 66', 'Brigada 2506', 'Partido Unidad Nacional Democrática (PUND)' and the self-styled 'Comandos F-4', all of which prepare and organize punitive actions and terrorist operations against Cuba from bases in southern Florida, United States. This constitutes a flagrant violation of the fundamental human rights of the Cuban people, notably its right to self-determination.

"Frequently, in fact almost daily, the Florida media report on the activities of the terrorist group known as Alpha 66, whose military training base, known as Rumbo Sur, is located at 40th St. SW and 172nd Avenue, Miami. That base is where preparations are made for the main terrorist operations against Cuba, and it is also known that United States naval personnel serve as instructors there.

"In October 1994, a terrorist commando group consisting of six men, all from the United States and all members of the terrorist organization PUND, infiltrated Cuba at a point on the coast north of Caibarién, Villa Clara Province. In the course of the incursion the commandos murdered a Cuban citizen while taking his car by force. The object of the terrorist group was to establish itself in the Escambray Mountains to carry out actions aimed at destabilizing the country's internal order.

"In November of that same year, three individuals, also members of PUND and also from the United States, were captured after infiltrating the Hicacos region in Matanzas Province with the intention of sabotaging and opening fire on economically significant facilities. These cannot be

regarded as isolated incidents. They are an integral part of a deliberate policy of aggression against Cuba.

"The Government of Cuba again expresses its confidence that the Special Rapporteur will use his good offices to ask the United States authorities to take energetic and decisive action to put an end to this state of affairs out of regard for the sovereignty and independence of the Republic of Cuba."

9. In a letter dated 7 October 1996, received by the Special Rapporteur on 6 February 1997 and addressed to the Assistant Secretary-General for Human Rights, the Minister of State for Internal Affairs of Uganda, Mr. Francis B. Nshemeire, stated the following:

"Reference is made to your letter G/SO 214 (18-13) of June 1996 addressed to the Minister for Foreign Affairs of Uganda in regard to the above-mentioned caption.

"Information available here does not reveal the existence of mercenaries in Uganda, let alone their being used 'as a means to violate human rights and impair the exercise of rights of peoples' self-determination'."

10. In note verbale No. 207/AL dated 24 June 1997, the Permanent Mission of France to the United Nations Office at Geneva stated that it would reply to the Special Rapporteur's request for information within two months, as that length of time was deemed necessary for the relevant data to be collected and forwarded to the Special Rapporteur.

11. The Permanent Mission of the Russian Federation to the United Nations Office at Geneva conveyed its Government's reply to the Special Rapporteur's request for information in note verbale No. 585 dated 14 July 1997, containing the following:

"The new Criminal Code of the Russian Federation, which came into force on 1 January 1997, views the use of and service as mercenaries as criminal.

"Article 359 ('Mercenary activity') of the aforementioned Code reads:

'(1) The recruitment, training, financing or other material support of mercenaries and the use of mercenaries in armed conflicts or hostilities:

'Shall be punishable by deprivation of liberty for a period of from four to eight years;

'(2) Participation by mercenaries in armed conflicts or hostilities:

'Shall be punishable by deprivation of liberty for a period of up to five years.

Note

''"Mercenary" shall mean a person acting for the purpose of obtaining material reward and otherwise than under a commission to perform official duties who is either not a citizen of a country participating in a conflict or hostilities or not permanently resident in its territory."'

12. The chargé d'affaires ad interim of the Permanent Mission of Cyprus to the United Nations Office at Geneva, Ms. Loria Markides, has conveyed to the Special Rapporteur a letter dated 25 July 1997 in which she states the following:

"I have the honour to refer to your letter of 4 June 1997 concerning General Assembly resolution 51/83 and to inform you as follows:

"Cyprus ratified the above Convention on Mercenaries on 21 May 1993. According to the ratification law (14(III) 1993) any person who commits any offence which is set forth in the Convention is guilty of a felony and shall be liable to imprisonment for seven years.

"No legal proceedings have been taken against any person until today, since no formal complaint has been made or information given to the appropriate authorities for the committing of an offence under the above-mentioned law."

13. The chargé d'affaires ad interim of the Permanent Mission of Brunei Darussalam to the United Nations Office at Geneva, Mr. Haji Mohd Nor Haji Jeludin, has provided the Special Rapporteur with the following information, also dated 25 July 1997:

"The Attorney-General's Office of the Ministry of Laws of Brunei Darussalam has confirmed that there are no laws outlawing mercenary activities and the use of mercenaries. Brunei Darussalam is not a member of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989. And, finally, there are no mercenary activities in Brunei Darussalam pertaining to the information requested."

14. By a note verbale dated 30 July 1997 the Permanent Mission of Ecuador to the United Nations Office at Geneva replied to the various questions contained in the Special Rapporteur's letter of 4 June 1997 (see para. 6) as follows:

"(a) Ecuador has not recorded any kind of mercenary activities. Activities of this kind are expressly prohibited by current legislation.

"(b) No Ecuadorian nationals are known to have participated in mercenary activities or in the commission of acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination or against the effective exercise of the human rights of their people.

"(c) Colombian guerrillas are quite active very close to the frontier with Ecuador. It is important to point out in this connection that specific military agreements have been concluded between the armed forces of Colombia and Ecuador on common procedures and combined military actions designed to give effect to frontier-control arrangements in the interests of their common security.

"(d) There is no knowledge of any participation by mercenaries in the commission of internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband.

"Ecuador is committed to combating smuggling.

"Ecuador has been free of terrorist activities, and no death squads have been detected in its territory.

"(e) Ecuador has submitted to the National Congress for approval the text of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, for it recognizes that the activities of mercenaries are contrary to the fundamental principles of international law contained in its Constitution.

"Ecuador also acknowledges the hard work done by the Special Rapporteur on this topic and reaffirms its support for that work.

"(f) The United Nations should permanently monitor such activities, with a view to: establishing flexible arrangements for exchange of information and mutual assistance between the competent authorities of Member States confronted by this type of problem; disseminating information through specialized media in order to make available the experience of Member States confronted by these problems and to make known common or individual procedures to combat and eliminate the use of mercenaries; and sponsoring conferences of the intelligence agencies of Member States.

"(g) None available."

15. The Permanent Mission of Germany to the United Nations Office at Geneva replied to the Special Rapporteur's request for information by a note verbale of 31 July 1997. The information conveyed in this note verbale is set out below:

"In Germany the prosecution authorities and courts have a statutory duty to prosecute and punish any acts committed by mercenaries that are defined as offences under German law. The same applies to any person who recruits, uses, finances and trains mercenaries. Specifically, the relevant provisions in the Penal Code relate to murder, manslaughter, causing an explosion, rape, robbery and causing bodily harm as well as any attempt to commit or instigate such offences or complicity in their commitment. Offences committed abroad also fall within the scope of German penal law as defined by the relevant statutory provisions.

"Germany is a signatory to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Ratification is currently being considered.

"The Government of the Federal Republic of Germany takes a grave view of the recent increase in reports of mercenary activity. It believes only concerted efforts by the international community can effectively combat the dangers to world peace, international security and the right of peoples to self-determination stemming from the use of mercenaries."

16. By note verbale No. GENC 011-115 of 6 August 1997 the Permanent Mission of Finland to the United Nations Office at Geneva replied to the Special Rapporteur's letter of 4 June 1997 as follows:

"With reference to point (e) of the letter by the Special Rapporteur the Government of Finland wishes to submit the following information. The Government of Finland is currently considering whether it is possible and desirable in the light of the present Finnish legislation to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989."

17. During the period covered by this report the Special Rapporteur also received general communications from various non-governmental organizations, including the Bougainville Freedom Movement; the Centre for Conflict Resolution of Cape Town University; International Alert, London; the Humanitarian Law Centre, Belgrade; the Lawyers Committee for Human Rights, New York; and the Mohajir Quami Movement, Pakistan.

III. MERCENARY ACTIVITIES IN COUNTRIES OF AFRICA

A. General aspects

18. Since the 1970s various African countries have suffered from the presence of mercenaries who have interfered in internal affairs and had a considerable impact on the self-determination of the peoples of the States where they were active. On the eve of the third millennium mercenary activities in Africa have declined but not disappeared. They intermittently reemerge in connection with armed conflicts and power struggles and are thus more of a latent danger. In addition, there is the rechannelling of mercenary activities through private security firms, which present a more modern façade and engage in activities which are apparently legal but are no less dangerous for the independence, economies, democracy and self-determination of the African peoples.

19. On the basis of the information collected over 10 years the Special Rapporteur responsible for analysing and proposing options for the elimination of mercenary activities is justified in stating that, although the phenomenon of mercenarism can occur in any country and continent, Africa is the place most exposed to the activities of mercenaries. In the 1970s this was due to the vestiges of colonialism and the open hostility of those who felt their interests harmed by the accession to independence of sovereign African States.

20. However, the continuing examples of countries in which attacks were carried out by mercenary forces in the 1980s and the 1990s provide the basis for a description of the phenomenon. This should be taken into account in the work of strengthening peace in Africa and securing the adoption of preventive measures against mercenaries.

21. The recurrent elements observable in the countries which have suffered from the presence of mercenaries are noted below, in a list which is neither exhaustive nor definitive:

(a) Political instability, virtually endemic in countries in which the struggle for power among factions reveals a marked reluctance to respect the rules of democracy on the part of political leaders who, in order to maintain their share of power, do not hesitate to engage in militarism and create armed groups around themselves;

(b) The weak institutional structure of the armed forces, which as a result assume in practice the role of deliberative bodies, with the capacity to arbitrate internal political disputes and resolve them by military means;

(c) The development of a segregationist policy in the days of apartheid, which affected many countries of southern Africa and subjected them to criminal acts and attacks by battalions of mercenaries from the very heart of the racist segregationist regime;

(d) The existence of many internal armed conflicts, which at times embraced whole regions and in which the belligerents hired mercenaries to boost their military potential;

(e) The lucrative business for organizations which hire and supply mercenaries and for arms dealers resulting from the incitement of hatred and political, religious, ethnic or any other kind of rivalry which fuels the prolongation of the armed conflicts;

(f) The insecurity of rulers, who have not hesitated to organize militias or military apparatuses for their personal protection, in which the training and visible presence of foreign mercenaries have exacerbated rivalries and fuelled armed confrontations, especially since these paramilitary corps of bodyguards are recruited from members of the ethnic group to which the ruler belongs. The response of other political leaders is then to recruit their own armed militias. This atmosphere of mistrust and militarization is favourable to the presence of mercenaries;

(g) The poverty, insecurity and lack of prospects which foster in some young people a marked tendency towards violent behaviour. This leads to the emergence of armed gangs which impose exactions on the population. Of course, this development would seem to be connected more with an increasing problem of vandalism and common crime. But it should not be forgotten that a significant number of young people, driven by hunger and unemployment and skilled in the handling of weapons, find that the mercenary life offers lucrative employment and a lifestyle very similar to that of the bogus heroes of a number of television series;

(h) Lastly, there are the modern private security companies which provide many different kinds of service, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries offering themselves as a solution, in exchange for large sums of money, to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources. Such companies, as will be discussed below, today represent the biggest and most sophisticated threat to the peace, sovereignty and self-determination of the peoples of many countries.

22. The description which we have given is based on the direct observation of cases, the statistically computable recurrence of situations in which the mercenary component manifests itself, and the changes which mercenary activities are undergoing. The gradual disappearance of the traditional mercenary, that is the misfit professional soldier who acted on his own initiative to form a gang to do dirty work on behalf of a third party, has not meant the elimination of mercenarism. Rather, mercenarism has become more sophisticated and is being channelled back through the façade of modern management and service companies, but it lives on.

23. This report does not claim to have listed and classified countries according to whether they are affected by the presence of mercenaries. There are many African countries which are achieving an optimum economic and political viability. But this progress is notably neither general nor stable. On the contrary, the precariousness of institutions, political instability and the military factor remain problems for a number of countries of Africa. It is against this background that the Special Rapporteur receives reports and information about mercenaries, who inevitably surface in places where a political crisis has become an armed struggle. Their presence, obviously, only adds fuel to the confrontation. This is a fact which the international community cannot disregard. Mercenaries continue to have an impact on life and peace in several African countries.

B. The case of Sierra Leone

24. The situation of profound political instability and compulsive actions by armed groups which prevails in Sierra Leone can be taken as a real-life example of the factors characterizing African countries in which the presence of mercenaries has further exacerbated their problems.

25. It will be recalled that, after four years of armed clashes and precarious control of power by a military regime, Ahmed Tejan Kabbah became President of Sierra Leone in democratic elections held in March 1996. The rebel forces of the Revolutionary United Front (RUF) then accepted a ceasefire, and months later, at the end of November 1996, a peace agreement was signed by President Ahmed Tejan Kabbah and the leader of the rebels, Foday Sankoh. The Governments of Côte d'Ivoire, Guinea, Burkina Faso, Nigeria, Ghana and Togo contributed to the peace effort, thereby providing for the world an eloquent demonstration of unity and efficiency in West Africa. From that moment on it was the responsibility of the democratic Government to strengthen political stability, the supremacy of civil authority and peace.

26. Fears about the extreme fragility of the peace have been borne out by events to a considerable extent. The problems of extreme poverty and lack of staple foods and the continuing presence of armed groups engaged in pillage have helped to perpetuate insecurity and fear as factors limiting the Government's ability to expand its basis of legitimacy. For much of the population, there has been no difference whatever between the war of earlier months and the proclaimed peace; people have been subjected not only to the continuing exactions of the armed rebels but also to those imposed by members of the regular armed forces.

27. It was probably the widespread insecurity which caused the elected Government to decide not to cancel the contract of Executive Outcomes, a private security company that works with mercenaries and performs a variety of services. Instead, it reformulated the contract making the mercenaries principally responsible for the protection of the region of Kovo against the attacks of the rebel forces. However, the signing of the peace agreement carried with it the rebels' request that Executive Outcomes should leave Sierra Leone. We assume that this had its effect on a Government which, whatever its intentions, relied on the supposed efficiency, protection and security to be afforded by a private company formed by mercenaries, who were more interested in what they could earn for their services than in a stable and lasting peace in Sierra Leone.

28. Be that as it may, a coup d'état occurred on 25 May 1997, which was led by Commander Johnny Paul Kosoma and in which the lower ranks of the armed forces took part. The toppling of President Ahmed Tejan Kabbah and the assumption of power by a revolutionary council, which immediately called upon Nigeria to return Foday Sankoh, put an end to a precarious peace and triggered the renewed violence which still afflicts the country. The Governments of the region not only have condemned the coup but have also isolated the rebels and demanded the return of the democratic Government of President Ahmed Tejan Kabbah.

29. The thesis which the Special Rapporteur advances is that the presence of the private company which was partly responsible for the security of Sierra Leone created an illusion of governability but left intact some substantive problems which could never be solved by a service company. This danger was flagged in paragraphs 64 and 65 of the report of the Special Rapporteur to the Commission on Human Rights (E/CN.4/1996/27), where he noted that Executive Outcomes was involved in such delicate activities as: "training of officers and other ranks; reconnaissance and aerial photography; strategic planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF, etc." (para. 65). Moreover, Executive Outcomes was responsible for overall security and was directly active in the Kovo and Koidu districts, Kangari Hills, and Camp Charlie at Mile 91.

30. The issue was also dealt with in the report which the Special Rapporteur prepared for the General Assembly (A/51/392, para. 33) in 1996, where he warned about the precarious situation in Sierra Leone, pointing out that the presence of a company in Sierra Leone which worked with such dubious personnel as mercenaries in security matters was a debilitating factor which at some point would impair the stability of the legal Government. Prompted by an enlightened sense of unity, discipline and subordination to civilian rule, Sierra Leone

should accord priority to organizing its police and armed forces, which should assume sole responsibility for security. Retaining the company for that function until late 1996 was a mistake and a loss of valuable time, and, according to the thesis developed here, it weakened the legal Government of President Ahmed Tejan Kabbah.

31. A committee appointed by the Economic Community of West African States (ECOWAS) has now started to discuss with the junta governing Sierra Leone procedures for a rapid restoration of the constitutional order, with the proviso that the return of power to President Ahmed Tejan Kabbah is non-negotiable. However, at the end of July 1997 the military junta announced that it would remain in power until the year 2001 and with that announcement compounded its international isolation and the possibility of being subjected to sanctions or of causing further resort to arms in the region.

32. The current situation in Sierra Leone has quite simply added to the suffering of its population: no fewer than 500,000 persons are estimated to have been displaced, most of whom are living a hand-to-mouth existence. The demand made by the Governments of West Africa, which has the endorsement of the Organization of African Unity (OAU) and the United Nations, could provide the basis for the return to power of the legitimate President, Ahmed Tejan Rabbah, and is a prerequisite for launching sustained programme activities promoting life, humanitarian care, order, security, peace and democracy. With a view to the kind of intense effort required by the situation in Sierra Leone, the active commitment of the African countries and United Nations backing of that commitment are indispensable if there are to be political stability and opportunities for development in Sierra Leone. But events should also teach us to be wary of wrong approaches that do nothing to cure the structural ills suffered by the people. In the final analysis, the right to life, the political and legal institutions of States, security, peace and maintenance of the rule of law and democracy are not matters to be turned over to private companies which claim to perform security services; such companies stand to gain by selling their competence as security agents but they certainly cannot replace bodies which have been entrusted with the responsibility of protecting life and maintaining security as an obligation vested in the State.

C. Presence of mercenaries during the armed conflict in the Democratic Republic of the Congo

33. In the report which the Special Rapporteur submitted to the Commission on Human Rights in March 1997 he made an incidental reference to the presence of mercenaries which presumably had been hired by the Government of what was then Zaire, when Mobutu Sese Seko was still President. The communications sent by the Special Rapporteur to the Government of Zaire to shed light on the allegations were never answered. It appears that the hired mercenaries were active mainly when the military conflict was concentrated in the east and that their principal goal was to prevent the city of Kisangani from falling into the hands of the Alliance of Democratic Forces for the Liberation of Congo-Zaire, which was headed by Laurent Désiré Kabila.

34. Notwithstanding the support of the mercenary forces, the Alliance advanced gradually in Zairian territory until it took Kinshasa, the capital, and installed the Government of the current President of the Republic.

35. The overthrow of the Government of Mobutu Sese Seko, after 31 years in power, cannot alter the fact that it drew on approximately US$ 50 million in public funds to pay and arm mercenaries in a desperate attempt to remain in power or the fact that it was the Government itself which by this action endangered the lives of Zairians and the right of the people to self-determination. According to the information received, the mercenaries hired to defend Mobutu came principally from: the Federal Republic of Yugoslavia (Serbia and Montenegro); Bosnia and Herzegovina; and France, where two former members of the presidential security teams, Alain le Carro and Robert Montoya, were alleged to be in charge of recruiting between 200 and 300 mercenaries. Laurent Kabila himself said in a public statement that mercenaries had been hired to defend then President Mobutu, the majority of whom were Angolans, Frenchmen and South Africans. There were also, but in smaller numbers, Belgians, English and Mozambicans. Executive Outcomes was also mentioned as a provider of mercenaries, a fact that the company immediately denied. These reports were repudiated by the Governments of several countries referred to in connection with their nationals; they stated that they had no involvement whatever in the alleged hiring of mercenaries.

36. There is some evidence of the actual presence of the mercenaries who attempted to defend Mobutu Sese Seko's Government and who after the fall of Kisangani for the most part chose to withdraw. With the intention of clearly establishing what actually happened, the Special Rapporteur has turned to the Government of the President of the Democratic Republic of the Congo to request from it accurate and verifiable information.

IV. PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES

A. Critical analysis of the current situation

37. The information accumulated over the years and the experience gained through working visits to countries where mercenary activities are occurring in the context of internal or international armed conflicts have enabled the Special Rapporteur to assemble a critical mass of material that constitutes a sufficient basis for comprehensive reflection aimed at providing useful inputs for the decisions on the subject to be adopted by States and international organizations. Some of his ideas have already been submitted to the Commission on Human Rights and have been revised and updated with a view to their submission to the General Assembly.

38. The allegations made regarding the presence of mercenaries in armed conflicts led the Special Rapporteur to study in depth the cases and forms taken by mercenary activity. The seriousness of some of the allegations compelled him to undertake several on-site missions. Information was gathered from authorities and non-governmental organizations, from investigations conducted by specialized agencies and the press, from interviews with victims of mercenary violence and their families, and from such interviews as could be conducted with

mercenaries, some of whom accepted that designation while others did not, and by reviewing judicial documentation and ascertaining the open and public existence of organizations devoted to the recruitment of soldiers of fortune. The evidence was that armed conflicts arising in regions as disparate as southern Africa, Central America and the former Yugoslavia nevertheless had one common feature, namely the participation of mercenaries, who were almost always associated with the most vicious aspects of the conflicts.

39. On the basis of his studies and research, the Special Rapporteur has maintained and continues to maintain that mercenary activities are not a thing of the past, but still exist; mercenaries are used as a means of violating human rights and jeopardizing the self-determination of peoples and the stability of legitimate Governments. Armed conflicts, terrorism, arms trafficking, covert operations relating to the interest of a third Power acting to harm one or more parties to an armed conflict, the inability of a Government to ensure security in its country, and violence linked to extremist intolerance foster or create the market for mercenaries, defined as foreign experts or enterprises whose "skilled" services are sought because of their proven experience in military matters.

40. Despite the condemnations contained in the resolutions of several United Nations bodies, Governments which are weak or whose power is illegitimate, armed insurgent groups and Powers acting through covert operations have been responsible for the existence of mercenary activities, with a heavy toll on the peoples whose lives they affect.

41. Mercenaries are hired for various reasons: military professionalism; experience in warfare; concealment of the real mastermind; greater safety in acting without directly assuming the consequences; the comparatively low cost, in terms both of money and of endangering the lives of one's own military personnel; knowledge of strategic planning, and so on. The reality is that there are persons disposed to become mercenaries and that, ultimately, they are so disposed because of the pay they receive for conducting unlawful activities in a country other than their own; their intervention is directly motivated by financial gain. This situation is compounded by the existence of modern entrepreneurial conglomerates involved in security as an "industry", which hire mercenaries for some of their activities. There are usually two circumstances that determine the actual use of mercenaries: on the one hand, the existence of an organization, State or party to a conflict which, in order to carry out operations that are not in conformity with the law or with international obligations of non-interference, resorts to hiring mercenaries as a way of achieving its goals. On the other hand, there are recruiting organizations and enterprises and people who, for high pay, will agree to serve as mercenaries in the knowledge that they will be performing acts prohibited by national laws and international treaties protecting human rights, State sovereignty and the right of peoples to self-determination.

42. The investigation of mercenary activities must be objective, encompass all those involved and seek to determine the nature of the act, without accepting any formal legal limitations that may be invoked precisely to conceal the mercenary component. When there are accusations that acts have been committed by mercenaries the actual identity and nationality of the person have to be

determined; the investigators must go through the files, rule out altruistic voluntary enlistment, compile information on recruitment and training centres for soldiers of fortune, follow the trail of covert operations, obtain reliable data on the pay and other benefits agreed upon, and detect the simultaneous use of other nationalities and passports. When a new nationality is granted to foreigners taking part in an armed conflict, it is necessary to establish the length of time, circumstances and legal grounds for the good faith and legitimacy of the new nationality. The investigation should also cover private security companies when there are reasonable indications that their services entail the employment of mercenaries who may resort to methods prohibited under international law. The issue of mercenary activities has so many ramifications nowadays that attention must focus on the matter of nationality, which hitherto has been considered as a means of differentiation and a determining factor in deciding whether an act that impedes the enjoyment of human rights and the self-determination of a people is a mercenary act. Indeed, a foreign Power can avail itself of nationals of another country to do serious harm to that country. In such a case, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of recruitment and payment. Nevertheless, if existing international law is excessively rigid, inadequate or full of gaps or lends itself to an interpretation too difficult to apply for the purpose of defining mercenary acts, it would be wrong to invoke the existing rules as justifying acts and behaviour which are intrinsically mercenary.

43. Without obviating the need to clarify, refine and expand the rules of customary international law and conventional international law to combat mercenary activity, it should be established as a principle that, in essence, the aim of such rules is to condemn a mercenary act in the broad sense as the buying and selling of criminal services in order to interfere with the enjoyment of human rights, sovereignty or the self-determination of peoples; and that there is international jurisprudence condemning interference by one State, not to speak of individual organizations, in the internal affairs of another State and in the lives of its people. It is an aggravating factor if nationals of the latter country are employed for that purpose. Such nationals would not strictly speaking be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is an undeniable fact, as is the willingness of such nationals to accept a relationship that turns them into mercenaries.

44. The Special Rapporteur believes that unlawful activities in which nationality is used to mask their mercenary nature by a Power that recruits, prepares and pays an individual to commit a criminal act against another country should be analysed and debated with a view to revising current international provisions on the subject. Since the General Assembly has repeatedly condemned mercenary activities, as have such other United Nations organs as the Economic and Social Council and the Commission on Human Rights, and since in addition Member States have condemned such activities and some countries have national laws making mercenarism a crime, where there are no laws or only inadequate laws a case can be made for the existence of customary international law that rejects, condemns and prohibits mercenary activities based on the nature of the acts and not on the fact of having a different nationality.

B. Current international legislation and its limitations

45. A fundamental question raised by the persistence of mercenary activities is whether current international legislation adequately covers and resolves the problems posed by the presence of mercenaries. In the Special Rapporteur's experience, the topic calls for a review as outlined below. Issues on which the relevant United Nations bodies must take a stand include: what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary in the service of a third State or the other side in an armed conflict? What is the status of a non-resident national who is paid by a third State to carry out criminal activities against his own country of origin? And what about a dual national, one of whose nationalities is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third State? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? These questions are not simply casuistic. The Special Rapporteur's earlier reports contain specific references to situations such as those just described and, even though the evidence pointed to mercenary activities, legal inadequacies and gaps made it difficult accurately to classify the act and the person who committed it.

46. In this context, it is regrettable that the General Assembly's repeated recommendations that a meeting of experts should be convened to consider further the issue of mercenaries and to make proposals on a clearer legal definition in order to assist in the prevention and punishment of mercenary activities have not been taken up as yet, owing to lack of financial resources. The continued failure to adopt criteria to promote a common and strong position against mercenary activities is tantamount to encouraging the existence of mercenaries and their activities, despite isolated action taken by individual countries. Contradictions are thus likely to arise between declarative statements formally condemning mercenary activities and practical concessions to the provision of efficient services by persons or groups of persons and businesses with a mercenary past and strong suspicion about and mistrust of the activities they are carrying out at present.

47. The Special Rapporteur, on the basis of his study of conflicts and situations with a mercenary component, is compelled to reiterate his viewpoint to the General Assembly and to maintain that, no matter how they are used or what form they take to acquire some semblance of legitimacy, are a threat to the self-determination of peoples and an obstacle to the enjoyment of human rights by peoples who have to endure their presence.

48. An analysis of the factors behind the recurrence of the phenomenon must consider the problems caused by gaps in existing legislation and by flexibility with regard to classification as a mercenary. The persistence of mercenary activities, the range and variety of the forms in which they are carried out and the hidden networks of complicity behind these activities suggest that States, particularly the smallest and weakest ones, are not adequately protected against mercenarism and its various forms. The international legal instruments that serve as a framework for the consideration of the question are imperfect and contain gaps, inaccuracies, technical defects and obsolete terms that allow

overly broad interpretations to be made in order to prevent persons who are in fact nothing but mercenaries from being classified as such.

49. Article 47 of Protocol I Additional to the Geneva Conventions of 1949 is the only universal international provision in force that contains a definition of mercenaries; paragraph 1 punishes the mercenary by excluding him from the category of combatant or prisoner of war, which amounts to condemning him for his participation in armed conflicts; and paragraph 2 then states the definition. The first point to emphasize is that, because of its placement and contents, article 47 of the Protocol does not legislate on mercenary activities, but, rather, limits itself, from the standpoint of international humanitarian law, to providing for the possibility of mercenarism and defining the legal status of the mercenary if he takes part in an armed conflict. As may be seen, it does not legally define the act; hence the above-mentioned gaps.

50. Furthermore, the definition of a mercenary contained in article 47 lists the cumulative and concurrent requirements that must be met in order to determine who is a mercenary and who is not. Given the variety and complexity of the armed conflicts of the past three decades, however, the wording of this provision has not always been suitable for classifying mercenary activities. The point made by the Special Rapporteur in one of his first reports (E/CN.4/1988/14, para. 43) has turned out to be true:

> 'One important element for the understanding and application of article 47 of Additional Protocol I is that no single requirement set forth in subparagraphs (a) to (f) is sufficient in itself for a person to be classified as a mercenary. The requirements are cumulative and concurrent, and all must be met for a person to be described as a mercenary. This is also one of the aspects that has raised the most objections to the application of article 47, since many have pointed out that these requirements are in fact very difficult to prove and that they make it easy for the mercenary to avoid being classified as such, while the party that has been attacked loses its legitimate right to have him punished and obtain redress'.

51. This gap is also not filled in the internal legislation of most countries. According to the information provided directly to the Special Rapporteur by Governments, the laws of most countries do not classify mercenarism as a punishable offence. Although it has been eight years since the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly, it still has not entered into force, as barely 11 countries have ratified or acceded to it. While its provisions contain measures which are a step forward towards the eradication of this reprehensible activity, it should be noted that article 1, paragraph 1, reproduces almost verbatim the text of article 47 of Additional Protocol I on the definition of a mercenary. Added paragraph 2 relates to mercenary violence against the constitutional order or territorial integrity of a State. No progress has therefore been made with regard to a better and simpler definition of the concept of mercenary, which would allow quicker and more direct action to be taken against mercenary activities.

52. In this context of the gaps in and limitations of universal international legislation, Africa enjoys better legal protection thanks to the Convention for the Elimination of Mercenarism in Africa, which was adopted by the OAU at its 1977 meeting in Libreville and entered into force in 1985. But "better legal protection" does not mean full protection against all the current shapes, forms and manifestations which mercenary activity may adopt or present. Even though the Convention is more complete than article 47 of Additional Protocol I, it does not differ much from that text as far as the definition of a mercenary is concerned, and it lends itself to different and perhaps contradictory interpretations when it is States themselves that, on the initiative of their Governments, hire private firms to perform services connected with public order and security.

53. The situation is one that involves a vacuum in treaty law, the inadequacy of existing provisions and ambiguity in their legal interpretation. This results in loopholes, which make it easier for the presence of mercenaries, or their recruitment, without reference to their status, to appear to be within the law.

54. In the light of the foregoing, the Special Rapporteur maintains that the relevant international legal instruments are but imperfect tools for dealing with the issue of mercenaries. There are difficulties in applying article 47 of Additional Protocol I to the 1949 Geneva Conventions to a broad range of cases involving mercenary activities; mercenarism is not classified as an offence under the internal criminal law of many countries; and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has yet to enter into force.

C. Private security companies and mercenary activities

55. In the last two reports submitted, one to the General Assembly and the other to the Commission on Human Rights, the Special Rapporteur broached the subject of private companies operating in the international market offering security and representing themselves as providing expert assistance, largely in military training. In addition, such companies are generally part of holdings and are therefore able, through other companies, to take part in various services which complement and enhance their offer: transport, communications, economic and financial consultancy, health, sanitation services, and so on. In the earlier reports the Special Rapporteur suggested that this was a new operational model, clearly more up to date and effective and with a relatively adequate legal cover, but nevertheless linked to mercenary activities and involving activities which it was more prudent to entrust to State authorities than to abandon to the vagaries of free-market competition.

56. Today, when the activities of such companies in various countries, with varying results, is apparent, when there have been instances of international outrage as a result of popular rejection in some countries of the intervention of such companies in internal matters related to the sovereignty of the State and of the contracts, worth millions, signed with Governments seeking their services, the issue inevitably arises of what these companies mean for the self-

determination of peoples, security and peace, as international law has defined these concepts and entrusted related responsibilities to the United Nations.

57. It is clear that these companies offer themselves as a kind of alternative security model for countries with internal conflicts which Governments have difficulty in managing. The premise underlying their offer is that they fill a critical void, since there are Governments which are unable to provide security, and the international machinery does not generally anticipate the worsening of rapidly deteriorating situations moving towards armed conflict or generalized confrontation, or respond with the degree of urgency that a disturbance threatening the lives of entire populations demands. In fragile countries, where Governments are close to collapse, the presence of such private companies which, relying on the experience of military professionals, sell security, strategic planning, order, reorganization of the military apparatus of the State, protection to allow productive capacity in respect of major natural resources to be regained, short-term neutralization of zones where there is armed conflict and so forth, may be, and in fact is, well received by segments of the population.

58. But the point is that the effectiveness of the services they offer and the fact they are hired by legitimate Governments cannot be confused with the nature of the acts they carry out. They imply a kind of "formally tolerated mercenary intervention", where, in reality, the State has abdicated its substantive responsibilities to profit-seeking organizations and where memories of old colonial companies are inevitably evoked. Today's companies are, of course, more modern, and their intentions smack less obviously of transnational neocolonialism. But the danger exists for a number of territories in Africa and any other continent or archipelagic zone where there are States in possession of significant natural resources or a strategic location, which are experiencing acute problems of poverty, internal confrontation and ungovernability.

59. The composition of these private security companies leaves no room for doubt. The major shareholders and management board members are people with professional military experience, and in those which have been set up in South Africa, the United Kingdom of Great Britain and Northern Ireland and Barbados, their records identify them as mercenaries who have taken part in various armed conflicts. As a general rule, the contracts they sign constitute acts of intervention in the internal affairs of a State, although consented to by the Government, where an essentially military function is carried out in exchange for a handsome recompense. There is a clear association between such conduct and mercenary acts, although in formal terms there has been a change from the traditional mercenary since mercenaries are now hired by a company which trains them to provide technical services, less bloody, perhaps, with the focus on organizing effective internal security machinery, guaranteeing public order and putting an end to armed conflicts on behalf of the Government hiring them and providing them with authority to intervene.

60. This is probably the most controversial aspect. Companies conclude these contracts with Governments which represent the State. But the problem lies in the fact that responsibility for internal order and security in a sovereign country is an obligation which may not be renounced or transferred and which the State discharges through its police and armed forces. If it hands over such

authority to a private company, and a foreign private company at that, it is agreeing to a limitation of State sovereignty, with the further drawback that the substantive legal rights of its inhabitants may be impaired and basic human rights principles and norms of humanitarian law may be violated.

61. There are private security companies operating in the international market; those countries which have signed contracts allowing them to intervene in internal affairs are known; the negative reaction which such activities have engendered among broad segments of the population in the countries where they have operated or are operating is also known. The point is that, without prejudice to acceptance of the market as a natural and regulated phenomenon in which all countries participate as best they can, the international community cannot accept, without undermining the principles on which it is based, that a function of the free market should be selling security operations the practical effect of which is to allow intervention in internal affairs by paramilitary forces with a mercenary component. In terms of human rights, making internal order, the security of the individual and control over the exercise of civil liberties the responsibility of private international security companies is simply unacceptable. A situation such as the one described is unimaginable in developed countries, which enjoy political stability and have a comprehensive institutional framework. Why should poor countries affected by instability have to add to their sufferings a situation in which private companies, in exchange for vast earnings which have a negative impact on existing poverty, take over security and control in practice the most important decisions of the State. What will then become of the independence and sovereignty of such States? The most likely outcome is that problems will, in substance, persist and become worse when the companies withdraw. If the situation obliges them to remain indefinitely, is it not true to say that the independence of the State will have disappeared?

62. This new operational model, as typified by Executive Outcomes (PTY) Ltd., with which the Special Rapporteur became acquainted during his mission to South Africa in October 1996, consists in offering skilled military training, protection and internal security services internationally in return for large amounts of money and profits from the development of the natural resources of the place where the services are provided. Foreign firms investing in countries with significant natural resources are reportedly demanding that the security of the areas where their investment is concentrated should be provided by personnel recruited, trained and made available by the companies that sell security internationally. These companies generally organize the services they offer by recruiting foreign staff with military and police experience and, in some cases, links to mercenary activities. This has naturally given rise to a great deal of concern and mistrust, since what is mainly offered is security, which, in the modern State drawing its inspiration from eighteenth and nineteenth century liberalism, is exclusively the responsibility of the State and an expression of its sovereignty. A number of companies of the type described are operating in various countries throughout the world. In March 1997, for example, Sandline International was in the news because its contract with the Government of Papua New Guinea caused a public outrage. But the first to become established was Executive Outcomes, registered in Pretoria and London, which presents an interesting case study, as we indicated to the Commission on Human Rights. Executive Outcomes was founded in Pretoria in 1989 by former members of the

special forces of the South African Defence Force (SADF) with experience in the repressive activities of the apartheid regime. Executive Outcomes operated under formally concluded contracts, according to company sources, providing military advice and training to the army of President Dos Santos of Angola, from which country it withdrew in January 1996. It also provided security to mining and oil companies. It was later active in Sierra Leone.

63. Is Executive Outcomes a legally constituted private company behind whose facade are hidden mercenary activities, which have been changed and modernized in the legal configuration of its operations without really ceasing to be essentially mercenary in nature? The answer to this question is intrinsically complex and goes beyond the scope of this report. However, some questions should at least be raised for consideration by the General Assembly in developing the outlines for an ad hoc report that would essentially focus on the type of company and on the implications of the international sale of security for State sovereignty, self-determination and human rights.

64. It should first of all be established that, although Executive Outcomes operates from Pretoria and is legally constituted, it is not a company with links to, or which is close to, the current Government of South Africa. Indeed, various governmental authorities have distanced themselves from and condemned the activities of Executive Outcomes, as indicated in their decision to submit to Parliament a bill that would restrict and regulate the legal existence of such companies in South African territory. It is even probable that when this report comes before the General Assembly, the bill submitted to the South African Parliament will have been approved. In general terms, such a bill would regulate the international sale of security services and military assistance in terms similar to those governing the export of weapons from South Africa.

65. By its own definition, Executive Outcomes is a company devoted to "providing highly skilled and confidential military adviser services" and to furnishing personnel, mainly military and highly skilled, to provide strategic and tactical training services in countries requiring sophisticated, effective support for the adequate control of their socio-political reality, to put an end to internal conflicts and to encourage the development of economic activities related to natural and mineral resource development. Underlying these services is the fact that they are offered because there are States in such crisis that they are no longer capable of safeguarding their borders, public order and the security of the population. In this context of crisis, which also involves distrustful, precarious relations with other States, a vacuum is created which is precisely what leads to the establishment of private companies selling security services. This is the case of Executive Outcomes and its holding company, Strategic Resources Corporation (SRC), which is working in several countries with a profile similar to that described earlier. It is also the case of, among others, Keeni Mini Services, the British firm British Defence Systems (Ltd.), the United States firm Military Professional Resource Institute, and Sandline International, which maintain close ties with one another.

66. According to its description, Executive Outcomes is a "security company" which provides technical advisers whose area of specialization is basically military. Its personnel provides training for situations such as: low-grade armed conflicts with counter-insurgency preparation, enemy infiltration,

intelligence, sabotage, protection of the population and the territory; infantry training, including motorized and parachute infantries; use of tanks; artillery and anti-aircraft artillery defence; combat engineering training; intelligence; military police; medical support services; communications; special rapid reaction forces; officer and support staff training; logistics; air force; navy; and technical support.

67. As stated, Executive Outcomes is not the only company of this kind in the world, but it is the most important of those operating in Africa, although its range extends to eight non-African countries in the Middle East, Asia and Eastern Europe. The risk that several companies of this kind may be competing in the market and may come into confrontation over unlawful resources is a potential danger which the case analysis must not overlook. Companies such as Executive Outcomes recruit highly qualified military personnel to provide their services. In Executive Outcomes, they are mainly former members of the South African and foreign security forces. According to the information obtained, about 700 persons are regularly employed by this company (soldiers, police, doctors, pilots, engineers, technicians, etc.), with high salaries; the salaries of every rank from general to non-commissioned officer may be five times higher than in an army such as that of South Africa and definitely 10 times higher or more than in other African States.

68. With regard to weapons and logistics, Executive Outcomes uses equipment purchased from companies in South Africa and various European countries. Part of the equipment includes aeroplanes, helicopters and aerial photography aircraft. Strategic Resources Corporation has an airline, Ibis Air (charter flights), which it uses to transport personnel and logistical consignments to various countries in which it is active. Executive Outcomes' tendency is, naturally, to grow and expand its interests, and this leads to its involvement in armed conflicts in the countries it assists and to its participation, which may be direct or through its subsidiaries, in internal affairs, such as the economy, resource development and capital investment. Although this is a matter of a private company being involved in intrinsically complex military services, the company is determined to prove that its activities are above board and that it is professionally efficient.

69. Are the personnel recruited by Executive Outcomes mercenaries? There is no simple and straightforward answer to this question. For most of the international law experts and international human rights non-governmental organizations consulted, Executive Outcomes is a mercenary company which works with mercenaries and carries out mercenary activities. Its executives vehemently deny this, claiming that they are "Africans" who have decided to work for the viability and development of Africa, doing so from the military standpoint, with which they are most familiar, and which is why they work in the security field. They also insist that, formally speaking, Executive Outcomes is a commercial security company whose registration and operation are not contrary to South African and international law. They also argue that they conclude contracts only with legitimately constituted Governments and always in order to do work designed to strengthen their internal stability and thus the possibility of putting economic development policies into practice.

70. The legal framework for mercenary activities is, of course, not clear and specific enough. Executive Outcomes' arguments about the lawfulness of its activities are therefore not to be ignored. The open debate on companies such as Executive Outcomes nevertheless involves the interpretation of legal provisions such as article 47 of Protocol I Additional to the Geneva Conventions. Persons who object to Executive Outcomes say that its personnel are mercenaries because they meet all the requirements for classification as mercenaries under that provision: they are military personnel recruited in South Africa or abroad in order to fight in an armed conflict; in the African countries with which they signed contracts, they not only trained personnel for the armed forces of these countries, but took part in the hostilities for personal gain and for sums substantially in excess of what the military personnel of the countries they assisted received; and they are not nationals of those countries, but foreigners, and were not sent on official duty as members of the armed forces of South Africa or any other State which was not a party to the conflict.

71. These are convincing arguments; however, in the light of the restrictive approach adopted in various United Nations resolutions which link mercenaries with concerted acts of violence aimed at violating the right of peoples to self-determination and undermining the constitutional order of a State or its territorial integrity, while seeking to obtain substantial gain and material compensation, the contracts which private military advisory, training and security companies conclude with States and the personnel working for these companies have some mercenary traits but cannot be described as being wholly mercenary.

72. It is obvious that the gaps in existing legislation and the insecurity which prevails in many countries, as well as the end-of-century tendency to privatize everything in sight, have created the conditions for the establishment of this new type of company, which is organized to sell security in the international market to client countries from which it obtains contracts worth millions, protection and links to powerful companies dealing in oil, minerals and precious stones; the results are the growth and expansion of these companies and their presence in the countries with which the contractual relationship has been established.

73. In view of the complexity and the implications of the issue, it is better not to hurry to reach any definite conclusions. The point is that there is now a type of company which offers full security services on the free and globalized international market that up to now have been the exclusive responsibility of each State's own internal security system. If States are prepared to give up an intrinsic element of their sovereignty, this is something which should be clearly stated and which the General Assembly should analyse in depth because it really would affect and change the nature, structure and functions of the State, while at the same time changing the nature of international relations.

74. A non-exhaustive list of topics which require further and more detailed investigation should include possible changes in the conduct of mercenaries, as defined since the establishment and organization of national armies, because it is undeniable that large numbers of them have been joining private companies which provide security internationally. It should also be borne in mind that

responsibility for a country's internal order and security are peremptory obligations which a State fulfils through its police and armed forces. Turning these responsibilities over to private companies registered in third countries would be to restrict the sovereignty of the State whose Government signed such a contract or to cede part of that sovereignty to a company, in return for which it would exercise the rights of the State police or those involved in defending territorial integrity or the population.

75. Sovereignty would thus continue to be exercised by the State, but it might be dangerous and destabilizing for the State to assume responsibility for any abuses that the security companies might commit against the civilian population or when these private companies put their relations with multinational oil, mineral, chemical and other companies first, and through the use of their military resources, impose the political, economic and financial hegemony of their business partners. If such a situation should arise, the weak countries, which might, because of their institutional problems, be tempted to become clients of these powerful companies, may simply have given the first coup de grâce to their own State and have paved the way for the multinational neocolonialism of the twenty-first century.

76. In view of the concerns expressed in the preceding paragraphs, it would also be appropriate for the competent United Nations bodies to discuss the international lawfulness of allowing the free market to include completely unrestricted competition from companies selling security services and the risk of interference in internal affairs by agents who, claiming to be experts, might actually be intelligence agents from third States, mercenaries, saboteurs or other elements whose assignment is to dominate, dissociate and weaken the receiving State. Of course, these are hypothetical situations arising out of the changing reality of traditional mercenary activities and their partial replacement by private security companies specializing in military matters. The problem should remain under study; it has to be solved on the basis of more in-depth knowledge of the facts, specific references and a systematic analysis concluding with suggestions and proposals for the adoption of political, legal and operational standards relating to mercenary activities and to companies which sell security internationally.

77. Lastly, it should be recalled that in unusually dangerous situations, regional organizations, the international community and especially the United Nations could have available advisory systems to support States in danger of succumbing to chaos and calling upon these companies to take charge of their security. It is obvious that the sovereignty of States and the security of the population would be better safeguarded by United Nations rapid-reaction or peacekeeping forces. In any event, the international systems cannot overlook the perils which loom over weak and crisis-ridden States. One positive step would be an increased will to take preventive actions that can neutralize resort to the use of force. What is needed specifically is to show that the systems for the protection of human rights and peace and security are capable of implementing efficient and convincing mechanisms to promote life, a relaxation of tensions and positive agreements for peaceful cooperation, and are more effective at doing so than these companies which derive material benefits from the weakness of Governments that are unable to control order and security in their countries.

V. PRESENCE OF MERCENARIES IN PAPUA NEW GUINEA

78. Since 1988 the Special Rapporteur has been closely monitoring the changing situation in the conflict on the island of Bougainville in Papua New Guinea, especially implementation of the measures adopted in order to achieve a peaceful solution to a conflict which has already caused more than 7,000 civilian deaths (many due to the lack of timely medical care, as well as to improve the human rights situation in general. In that context, he welcomed the signing of the Honiara commitments on 3 September 1994 by the Prime Minister of Papua New Guinea, Sir Julius Chan, and the Commander of the Bougainville Revolutionary Army, Mr. Sam Kauona. Pursuant to the Honiara commitments, a ceasefire agreement between the Government of Papua New Guinea and the Bougainville Revolutionary Army was signed on 8 September 1994, and in October of 1994 a peace conference was held which was attended by representatives of the various political factions. Unfortunately, the peace process did not unfold as planned and a number of events, including the assassination of the rebel leader Théodore Miriong in October 1996, resulted in renewed military action.

79. The Special Rapporteur has learned that, given the situation, the Prime Minister decided to sign a contract with Sandline International, a company registered in the Bahamas with offices in London, under which that company is to provide various military assistance services to the Papua New Guinea Defence Forces. According to the terms of the contract, concluded on 31 January 1997, Sandline International undertook, inter alia, to:

(a) Provide advice and military assistance to the Papua New Guinea Defence Forces with a view to supporting them in their task of protecting the territorial sovereignty of the country and retaking control of important national resources, especially the mineral deposits in Panguna;

(b) Provide tactical training for the Special Forces Unit (SFU);

(c) Furnish intelligence services in support of military operations;

(d) Conduct offensive military operations in Bougainville in conjunction with the Papua New Guinea Defence Forces for the purpose of neutralizing the forces of the Bougainville Revolutionary Army and of regaining control of the Panguna mine; and

(e) Provide adequate follow-up to those actions by means of specific operations which would be defined in other agreements.

80. In order to furnish the military assistance described above and to participate in military operations, Sandline International undertook specifically, inter alia, to:

(a) Send a 16-man command, administration and training team in the first week of implementation of the contract in order to establish the necessary liaison with the Papua New Guinea Defence Forces; develop logistical and communications infrastructure; prepare for the safe arrival of the military and aeronautical equipment contracted for; initiate the information-gathering and intelligence operations and begin training the Special Forces Unit;

(b) Set up bases at Jackson Airport and la Selva training centre in Wewak;

(c) Within 10 days of the arrival of the command, administration and training team, send and deploy the following throughout the territory of Papua New Guinea: Special Forces officers and troops, aircraft and helicopter crews, engineers, intelligence agents, special teams of operatives, mission troops, medical and paramedical personnel, and so forth;

(d) Send arms, ammunition and equipment, including aircraft, helicopters, electronic warfare equipment and communications systems, as well as any personnel necessary for their maintenance and for training in their use;

(e) Ensure that personnel sent to the country have appropriate identity papers, and assume responsibility for any expense caused by loss of its personnel, unless that loss was the result of negligence by the State.

81. In return, the Government of Papua New Guinea undertook to pay Sandline International US$ 36 million for the three-month initial period of the contract, to grant to Sandline International's expatriate personnel all tax exemptions, facilities and privileges in connection with their entry into, departure from and stay in the country and with the import of their goods and equipment and, in general, to grant all the authorizations, waivers, permits and licences necessary for them to fulfil their contractual obligations. The Government also undertook to instruct its civil servants and the members of the Defence Forces to recognize the military ranks of the company's personnel as established by the command structure and, accordingly, to obey orders from higher-ranking company personnel.

82. The Government also recognized that Sandline International's personnel were authorized to commit themselves to or initiate or fight in military operations, repel attacks, arrest and detain persons suspected of planning an act of aggression or of conspiring to do so and, in general, defend the population from threats of any kind.

83. At the end of March 1997, 40 of Sandline International's personnel, mostly South Africans, were forced to leave Papua New Guinea as a result of widespread protests within the Defence Forces at the signing of the contract described above and of mutinies in Port Moresby, the capital of the country. The leader of the group, Tim Spicer, a British citizen, was confined to quarters in the capital and his passport was confiscated. The Commander-in-Chief of the Defence Forces, Brigadier General Jerry Singirok, was dismissed by the Prime Minister for criticizing the conclusion of the contract and the dispatch of the company's first instructors to the front in Bougersee. On 18 March 1997, the army protested against the dismissal of its Commander-in-Chief, mutinied at the Murray Barracks and marched on Parliament. General Singirok later accepted his dismissal but requested that a commission of inquiry should be set up to investigate the Sandline International contract. On 26 March 1997 the Government agreed to appoint a commission of inquiry. The Special Rapporteur has contacted the Government of Papua New Guinea requesting information concerning those events and hopes to be informed of the conclusions of the commission of inquiry.

84. Although the commission's conclusions are not yet known, the available information concerning the crisis in Papua New Guinea suggests that it was triggered by the implementation of the contract between the Government of Papua New Guinea and the private security company Sandline International. For the armed forces and the population, the presence of foreign soldiers recruited by a foreign company, which was responsible not only for training but also for commanding military operations in an internal armed conflict, thereby subjecting the country's military leaders to its orders, and which received for the initial period of the contract (three months) $36 million, was considered to be an act that violated sovereignty and the right to self-determination. The shared perception of being faced with a mercenary presence under contract to the Government via a private company was without any doubt a clearly expressed fact in the indignation of both the armed forces and the population of Papua New Guinea. In addition, the use of mercenaries was noted by the international community.

VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

85. By resolution 44/34, of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Pursuant to article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. At the time this report was written, only 11 States had completed the process of expressing their willingness to be bound by the international Convention: Barbados, Cameroon, Cyprus, Georgia, Italy, Maldives, Seychelles, Suriname, Togo, Turkmenistan and Ukraine; while the following 11 States had signed the International Convention: Angola, Belarus, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia.

86. The International Convention confirms the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities, and it expands international regulation of the question, such regulation being at present essentially limited to article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 OAU Convention for the Elimination of Mercenarism in Africa. The entry into force of the International Convention will contribute to the accurate identification of situations involving mercenaries, the effective prosecution and punishment of offenders, and the clear determination of jurisdiction in each case, and will help to facilitate extradition procedures and preventive cooperation among States.

VII. CONCLUSIONS

87. Mercenary activities are a form of violence, condemned by United Nations bodies, which has been used to hamper the exercise of the right to self-determination of peoples and to violate human rights. Mercenaries tend to be present mainly in international or internal armed conflicts, where they offer their services to one or more parties to the conflict in exchange for payment,

causing serious damage to the people and territories that are victims of their actions.

88. Mercenary activities are not restricted to the context of what affects the principle of self-determination of peoples. The Special Rapporteur has detected an expansion in mercenary activities, observing that mercenaries are involved in serious crimes, such as terrorist attacks and drug and arms trafficking, in which they are usually the perpetrators of serious violations of human rights.

89. Since mercenary activities and the conduct of the mercenary per se can seriously impair the enjoyment of human rights, the self-determination of peoples, the stability of constitutionally established Governments and the maintenance of international peace and security, mercenary activity and conduct must be clearly and unequivocally banned.

90. In their current state, international provisions relating to mercenaries contain gaps or are inadequate and ambiguous, giving rise to problems of contradictory interpretation. This situation, which is compounded by the fact that, in the legislation of most countries, mercenarism is not classified as a separate crime and by the fact that there are not in all cases extradition agreements guaranteeing punishment, facilitates the perpetration of criminal acts by mercenaries and, very often, their impunity.

91. Some events that have taken place in countries in Africa, Europe and Oceania in recent years indicate not only that mercenary activities still exist but that the nature of them is changing. The establishment of companies to sell countries military advisory, training and security services in return for money and mining and energy concessions, in particular, may, in addition to the problems such contracts pose for the sovereignty of the States that conclude them, lead to the recruitment of mercenaries who will become involved in internal affairs, thus representing a threat to the people exposed to their activities.

92. Where such direct participation does in fact exist, the companies can come to take control of the country's security and also exert considerable influence on production and economic, financial and commercial activities. Companies of this kind which market security internationally may acquire a significant, if not hegemonic, presence in the economic life of the country in which they operate. The special relationship they establish with the country concerned creates an environment in which corruption can thrive.

93. If the type of company described in the preceding paragraph becomes widespread, the concept of security that the international community has had until now and the responsibility of each State to be accountable for and to guarantee, through its police forces, that each individual is able to exercise his rights and freedoms as a citizen will have been superseded by a new concept. According to this new concept, it would appear that any State is at liberty to buy military assistance and security services on the international market from organizations composed of persons of various nationalities, united by their function and their ability to control, punish and impose the order desired by the Government which hires them, regardless of the cost in lives, in exchange for money and the surrender of a portion of the State's natural resources.

94. The increase in companies engaged in the international sale of security could significantly alter the currently accepted concept of mercenary activity. Mercenary activity would no longer be considered as necessarily unlawful, illegitimate or illegal, while concepts such as that of State sovereignty and the obligations of a State towards its people and towards the observance and guarantee of the enjoyment of human rights would be tremendously and dangerously relativized.

95. Despite the fact that more than seven years have passed since its adoption by the General Assembly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has been ratified by only 11 States. The delay in its entry into force of itself encourages the continuation of this criminal activity.

VIII. RECOMMENDATIONS

96. Considering that mercenary activities have become diversified and are undergoing a transformation, acquiring characteristics that make them far more of a threat to the enjoyment of human rights, the General Assembly should reaffirm its condemnation of these activities and, additionally, suggest to all States that they should incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit, financing and use of mercenaries.

97. The united front which the international community should present in acting against mercenary activities is weakened because legal gaps and inadequacies, which are used to conceal mercenary activities and even to endorse the recruitment and employment of mercenaries, are tolerated. It is therefore recommended that mercenary activity should be treated in every respect as an unlawful and prosecutable act and a continuing offence. Given the legal gaps and inadequacies which permit the existence of mercenaries whose activities can pass as normal, it is recommended that the General Assembly should propose that the States Members of the United Nations should consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts.

98. In view of the harm which the delay in the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries is causing at the regulatory level, it is recommended that the General Assembly should appeal to States for understanding so that they will decide to ratify or accede to the Convention and bring it rapidly into force.

99. In what appears to be a new international trend, legally registered companies are providing security and military advisory and training services to the armed forces and police of legitimate Governments. There have been complaints that some of these companies recruit mercenaries and go beyond advisory and instruction work, becoming involved in military combat and taking over political, economic and financial matters in the country served. It is therefore recommended that the evolution of these companies, the relevant legislation of States and the conditions under which States agree to conclude contracts with such companies should be monitored closely. It needs to be

assessed whether the security and internal order of a State which has lost part or all of its capacity to keep order should henceforth be left to the action of specialized companies that will take charge of its security.

100. In particular, it should be investigated whether the sole effect of hiring a company to provide security, consultancy and military assistance in Sierra Leone was to create an illusion of governability while the real problems of the country were left untouched, and whether in itself this represented a source of weakness which at some point must necessarily have affected the stability of the legitimate Government of that country.

101. Another matter to be investigated is the hiring of a similar company by the Government of Papua New Guinea, which handed over to it functions that went far beyond the provision of advisory services and military assistance and included participation in combat. The General Assembly should specify that the preservation of the territorial integrity of a State does not authorize granting such functions and powers to private companies.

102. The General Assembly should call for a study on ways of reinforcing international prevention, action and intervention machinery in order to strengthen the exercise of human rights and promote the rule of law in countries threatened or weakened by armed conflicts, thereby ensuring that the hiring of private companies to take part in military or punitive campaigns is ruled out once and for all in practice and prohibited once and for all in international legislation.

103. Lastly, in view of the problems, circumstances and events described in this report, it is recommended that the General Assembly should request the Special Rapporteur to investigate more closely the possible involvement of mercenaries in the international sale of military assistance and security, with a view to making proposals for a better legal classification of private companies that offer these services internationally, precluding the presence of mercenaries, and safeguarding the sovereignty of States and their non-transferable responsibility in matters of law enforcement and internal security.